
MARITIME PIRACY IN THE BAY OF BENGAL: IS BANGLADESH EFFECTIVELY FULFILLING ITS OBLIGATIONS UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA TO COMBAT MODERN MARITIME PIRACY AND ARMED ROBBERY IN THE REGION?

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ABSTRACT

Maritime Piracy and armed robbery at sea are considered universal crimes recognized all over the world. As a maritime nation and developing country, Bangladesh also faces maritime piracy in the Bay of Bengal. Regulations governing maritime piracy have been established in Article 101 of the United Nations Convention on the Law of the Sea and Article 3 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, which were ratified by Bangladesh in 2001 and 2005, respectively. After settling the boundary dispute with India and Myanmar, Bangladesh has made great progress in the field of maritime security. In addition, Bangladesh has enacted the Territorial Water and Maritime Zones (Amendment) Act 2021 and incorporated relevant provisions to deal with maritime issues, including maritime piracy and armed robbery, in compliance with UNCLOS Article 101. The purpose of this work is to show what challenges Bangladesh faced in dealing with piracy in the Bay of Bengal in fulfilling its duty to cooperate and how it overcame such challenges. This paper intends to contribute to the field by addressing specific areas where Bangladesh can enhance its maritime security through the refinement of its domestic laws by closing existing gaps in international laws.

1. Introduction

Throughout history, maritime piracy and armed robbery have posed significant threats to human society. This menace has typically manifested in two primary ways: endangering the security of seafarers and causing substantial economic harm. The term ‘maritime piracy’ encompasses a range of maritime illicit activities, including theft, robbery, and abduction.¹ A lack of law and ineffective governance establishes an environment conducive to the relatively safe operation of pirate factions. This situation also renders pirate groups enticing to individuals seeking alternative means of sustenance, while simultaneously deterring commercial fishing fleets.² Motivated by economic gains from valuable cargo, maritime piracy emerges. Exacerbated by political instability with social inequality, exploiting geographical vulnerabilities with unprotected maritime routes, and a lack of regional cooperation further amplify this issue. The intricate interplay of these factors creates an environment conducive to piracy. Countering this threat demands a comprehensive approach involving factors like economic development, effective governance, global cooperation, and enhanced maritime security.³

In 2021, Bangladesh endorsed the Territorial Waters and Maritime Zones (Amendment) Act, a significant revision of its domestic legislation, which includes piracy and armed robbery at sea. While it can be argued that this new amendment addresses contemporary maritime piracy more effectively than the previous 1974 Act, there are lingering concerns about its adequacy in combating piracy in the Bay of Bengal. Bangladesh has taken a significant stride in meeting its obligations related to maritime piracy and incidents of armed robbery within its jurisdiction after ratifying the United Nations Convention on the Law of the Sea (UNCLOS) in 2001 and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation in 2005 (SUA Convention). In 2012, Bangladesh successfully resolved its maritime boundary dispute with Myanmar through the International Tribunal for the Law of the Sea (ITLOS)⁴. Later on, in 2014, Bangladesh achieved a landmark ruling from the Permanent Court

¹ Gurav AB, *Maritime Piracy and Security*, 11 Maritime Law and Policy Review 37-38 (2023).

² Desai RM & Shambaugh GE, *Why pirates attack: Geospatial evidence*, Policy Commons <https://policycommons.net/artifacts/4144770/why-pirates-attack/4952796/> on 01 Oct 2022. CID: 20.500.12592/dwrnt7.

³ Scharf MP et al., *Prosecuting maritime piracy: domestic solutions to international crimes* (2nd ed. 2015).

⁴ Hasan MM & Jian H, *Protracted Maritime Boundary Dispute Resolutions in the Bay of Bengal: Issues and Impacts*, 351 *Thalassas: An International Journal of Marine Sciences* 323-340 (2019). See also Bangladesh v. Myanmar, 16 ITLOS (International Ct.s of General Jurisdiction 2012).

of Arbitration (PCA)⁵ regarding the delimitation of its maritime boundary with India. After the settlement of maritime boundary disputes with Myanmar and India, Bangladesh emphasized building strong maritime governance. However, the implementation of these new legal measures beyond Bangladesh's maritime boundary in the Bay of Bengal remains a challenging task. Although the amended laws extend to cover Bangladesh's maritime territory, difficulties in addressing the high seas and other internal bodies of water, such as rivers and canals, still exist. Bangladesh has entered into several bilateral agreements with other nations to combat piracy beyond its maritime jurisdiction, but it remains a complex endeavor to oversee all high-seas areas with limited resources. This work aims to highlight that Bangladesh's commendable efforts to reduce maritime piracy and armed robbery in the Bay of Bengal deserve recognition, particularly given the constraints of limited resources. The purpose of this writing is to delve into possible lessons and insights that Bangladesh can glean from the efforts of other nations in combating piracy and armed robbery against ships in different regions. These insights will be examined to determine how they can be applied to address maritime piracy and armed robbery in the Bay of Bengal. Before delving into these studies, the writing also evaluates the current status and effectiveness of the national legal framework of Bangladesh for countering piracy and armed robbery at sea, with a specific focus on the pertinent provisions.

2. Concept of Maritime Piracy

Contemporary maritime piracy pertains to acts of violence, theft, or plunder occurring on the open ocean or in locations beyond the jurisdiction of any sovereign state.⁶ Individuals or groups employ vessels or other means of transportation to carry out these actions, primarily driven by personal profit motives. The notion of piracy has given rise to confusion, primarily because domestic laws may label actions as 'piracy' even when they do not meet the criteria of 'piracy' as defined in international law.⁷ The United Nations Convention on the Law of the Sea⁸ stands as a global treaty that establishes the legal framework for various regions of the world's oceans, encompassing aspects like state rights and responsibilities, as well as the delineation of maritime zones. While addressing a range of subjects, including piracy, the precise definition

⁵ Rashid H, *India-Bangladesh: UNCLOS and the Sea Boundary Dispute*, Institute of Peace and Conflict Studies https://www.ipcs.org/comm_select.php?articleNo=4557. See also *Bangladesh v. India*, 479 Permanent Ct. Arbitration (International Ct.s of General Jurisdiction 2014).

⁶ Keyuan Z, *Enforcing the Law of Piracy in the South China Sea*, 31 J. Mar. L. & Com. 107 (2000).

⁷ Dissenting opinion of Mr Moore in the Case of the SS. Lotus (France v. Turkey), 10 Permanent Ct. International Justice (International Ct.s of General Jurisdiction 1927).

⁸ United Nation Convention on the Law of the Sea, 10 Dec 1982, 1833 U.N.T.S. 3.

and specific particulars regarding piracy can be found in Articles 100 to 107 within the convention.

2.1 Definition of Maritime Piracy in International Treaties

Maritime piracy, as defined under the UN Convention on the Law of the Sea Article 101 (a), includes acts of assault, detention, or devastation perpetrated for private benefit by the crew or passengers of a private ship or aircraft. Such actions can transpire upon the high seas, devoid of the authority of any nation, encompassing engagement in piracy activities and aiding or instigating acts of piracy. The guidelines for addressing such instances are delineated in Article 15 of the High Seas Convention.⁹ Maritime piracy is defined within these regulations as unlawful acts involving aggression, detainment, or predatory behavior executed with personal gains in mind, by the crew or occupants of a private vessel or aircraft. These transgressions may transpire at sea, targeting other vessels or aircraft, along with the individuals and assets aboard such conveyances. Actions against ships, planes, individuals, or assets carried out beyond any nation's jurisdiction similarly fall under the purview of piracy according to this provision. The presence of analogous clauses in both the Geneva Convention on the High Seas and the UNCLOS underscores international recognition and concern regarding combating maritime piracy. These accords establish a legal framework to confront and combat piracy, ensuring that responsible governments uphold their commitments to battling this offense while bolstering maritime safety and security. Nonetheless, the discussion stemming from this limited attempt to grasp contemporary piracy not only inadequately encompasses modern variations of piracy in its phrasing but has also engendered considerable debate in its interpretation.¹⁰

Piracy is typically associated with activities occurring on the high seas or in areas beyond the jurisdiction of any specific state. Drawing a crucial distinction, it is imperative to discern between piracy, as outlined in Article 101 of the UNCLOS does not explicitly mention the Exclusive Economic Zone (EEZ), there is a suggestion that violent, unlawful acts committed within the EEZ might also be considered piracy, as indicated by a cross-reference in Article 58(2) of the UNCLOS.¹¹ As per the IMO Code of Practice for Investigating Piracy and Armed

⁹ Convention on the High Seas, Apr. 29, 1958, 450 U.N.T.S. 11, 11 I.L.M. 269 (1972).

¹⁰ Kao MB, *Against a Uniform Definition of Maritime Piracy*, 3 Maritime Safety and Security Law Journal 1-20 (2016). See also, Petrig A, *Piracy*, in *The Oxford Handbook of the Law of the Sea* at 843 (Donald Rothwell, et al. ed., 2016)

¹¹ Churchill R, *The UN Convention on the Law of the Sea-Still Relevant to Protection of the Marine Environment?*, Research Handbook on International Marine Environmental Law 33-56 (2023).

Robbery against Ships, which was adopted on December 2, 2009, armed robbery against ships pertains to distinct criminal acts committed for private gain and aimed at a ship, individuals, or property aboard a ship within a state's internal waters, archipelagic waters, or territorial seas. These activities encompass illicit actions such as assault, confinement, plunder, or the utterance of threats related to such offenses, though they do not constitute piracy. The Code also encompasses actions that incite or knowingly aid in such deeds. As specified in Part II of UNCLOS, the responsibility for enforcing actions against armed robbery against ships primarily rests with the coastal state. Additionally, as articulated in Article 3 of the 1988 SUA Convention, armed robbery against ships is deemed an offense.¹² In practice, numerous unlawful acts of violence take place within the territorial sea. This becomes particularly troublesome when the coastal State in question cannot efficiently prevent and curb such activities within its territorial waters.¹³

The mention of piracy on the 'high seas' in Article 100 could be misleading.¹⁴ On initial examination, Article 86 seems to exclude the EEZ from being categorized as part of the high seas. This could imply that universal jurisdiction over piracy may not apply within the EEZ. Nevertheless, Article 58(2) specifies that "Articles 88 to 115 apply to the exclusive economic zone to the extent that they do not conflict with" the sovereign rights and jurisdiction of the coastal State in the EEZ.¹⁵ Therefore, the regulations of the high seas framework, encompassing all provisions related to piracy, apply to the EEZ¹⁶, and therefore, the laws governing piracy are relevant to all such assaults occurring beyond territorial waters. However, if a government vessel takes action to combat piracy within the EEZ of another State, it is required to do so while giving due regard to the rights and interests of the coastal State.¹⁷ The phrase 'armed robbery at sea' is commonly employed by the IMO¹⁸ and, more recently, by the UN Security Council to describe acts of violence targeting shipping within territorial waters or in ports, even in cases where no actual robbery takes place.¹⁹

¹² Asariotis R et al., *Maritime Piracy. Part II: An Overview of the International Legal Framework and of Multilateral Cooperation to Combat Piracy*, United Nations Conference on Trade and Development (2014).

¹³ Tanaka Y, *The international law of the sea* (2023).

¹⁴ Pérez EC, *United Nations Convention on the Law of the Sea: A Commentary*, 21 Spanish Yearbook of International Law 441-442 (2017).

¹⁵ United Nations Convention on the Law of the Sea, art 56, 10 Dec 1982, 1833 U.N.T.S. 3.

¹⁶ Decaux E, Laurent Lucchini Et Michel Voelckel. *Droit De La Mer, T. I: La Mer Et Son Droit, Les Espaces Maritimes*, 56(1) *Politique étrangère* 337-338 (1991).

¹⁷ United Nations Convention on the Law of the Sea, art 58(3), 10 Dec 1982, 1833 U.N.T.S. 3.

¹⁸ International Maritime Organization, *Reports on act Piracy and Armed Robbery Against Ships, annual report - 2022*, MSC.4/Circ.267 (2023).

¹⁹ Pérez, *supra* note 14.

In Mauritius, the Piracy and Maritime Violence Act of 2011, which became operational in 2012, contains a piracy definition that exhibits only slight variations from the one found in UNCLOS. Nonetheless, *Police v Mohamed Ali Abdeoukader and Ors* in 2013, as decided by the Intermediate Court of Mauritius, illustrates that domestic courts can diverge from internationally accepted interpretations, even when adjudicating on a provision with wording that closely resembles international standards.²⁰ The suspects were acquitted by the court because the attack did not align with Mauritius' high seas requirement as defined in its piracy statute. Despite Article 2 of the Act explicitly stating that the high seas have the same meaning as in UNCLOS and include the EEZ, the judge departed from the literal language of the law. The judge determined that, in Mauritian law, the term EEZ only referred to Mauritius' EEZ and did not encompass the EEZ of any other state, including Somalia, where the attack occurred. Consequently, according to the court's unconventional and restrictive interpretation of the EEZ, the attack did not happen on the high seas and was, therefore, not considered piracy. This interpretation of the EEZ definition contradicts the understanding of the UNCLOS and the international community. Fortunately, in 2015, the Supreme Court overturned this ruling and affirmed that the EEZ of all states, not just Mauritius, should be regarded as part of the high seas.²¹ The Mauritian case indicates that jurisdictions that have recently presided over piracy cases have adjusted their domestic criminal legislation to align with the UNCLOS, aiming to establish consistency. Paige also issues a warning against adopting any new definition that would eliminate the high seas criterion in the UNCLOS.²² Such a move could endanger the principle of universal jurisdiction, which presently permits states with no direct connection to the alleged acts of piracy to apprehend and prosecute the suspects.²³

The principle of universal jurisdiction over piracy stands firmly established within customary international law and conventional legal frameworks. The global community has achieved significant success through collaborative efforts in deterring and suppressing piracy off the coast of Somalia, as evidenced by a declining trend since 2012. The United Nations has undertaken commendable and effective initiatives aimed at enhancing the capacity of Somalia and neighboring states in this regard. However, the effort stresses the limitations of current international and domestic legal frameworks. Nevertheless, the task of amending the piracy

²⁰ *Police v. Mohamed Ali Abdeoukader and Ors*, 311 (Intermediate Ct. Mauritius 2014).

²¹ *Director of Public Prosecutions v. Mohamed Ali Abdeoukader and Ors*, 452 (Supreme Ct. the Mauritius 2015).

²² Paige T, *Piracy and Universal Jurisdiction*, 12 Macquarie Law Journal 131-154 (2013).

²³ Kao, *supra* note 10.

definition in UNCLOS or modifying the provisions of the SUA Convention is formidable. Despite these challenges, it remains crucial for all nations to incorporate piracy into their domestic laws and empower their courts to prosecute and sentence suspected pirates under the principle of universal jurisdiction.²⁴ The case of *US v. Smith*, which occurred in March 1820 in Virginia, is widely recognized as a pivotal Supreme Court decision regarding piracy. This landmark case had a profound impact on the development of both international and domestic piracy laws. It delved into the concept of universal jurisdiction and touched upon various broader themes concerning how nations approach the issue of piracy.²⁵ The Harvard Research in International Law's Draft Convention on Jurisdiction with respect to crime included Article 9, which stated: "Universality - Piracy: A State possesses jurisdiction over any crime committed by a foreign national outside its borders, provided that the act qualifies as piracy under international law."²⁶

2.2 Maritime Piracy in Bangladesh

Previously, Bangladesh was classified as a nation with a high risk of piracy. In 2006, the International Maritime Bureau (IMB) labeled the Chittagong Port as the world's most perilous port.²⁷ Under UNCLOS, piracy encompasses acts of violence occurring on the high seas, which refers to areas outside the jurisdiction of any sovereign state. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)²⁸ adheres to the piracy and armed robbery definitions laid out by the LOSC and the IMO. The International Chamber of Shipping (ICS) distinguishes between different categories of maritime security incidents, including minor theft, armed robbery, and hijacking. This classification system enhances reporting accuracy and facilitates the effective handling of maritime security issues. Piracy constitutes an offense under international law; however, there is no corresponding offense outlined in the Bangladesh Penal Code.²⁹ This category of wrongdoing is outlined within Section 390 as 'robbery' or 'armed robbery.' Consequently, an

²⁴ Scharf, *supra* note 3.

²⁵ Samuels JH, *The Full Story of United States v. Smith, America's Most Important Piracy Case*, 1 Penn St. JL & Int'l Aff. xvii (2012).

²⁶ Harvard Research in International Law, *Draft Convention on Jurisdiction With Respect to Crime (Universality – Piracy)*, 29 American Journal of International Law 435-563 (1934).

²⁷ *Bangladesh Navy*, GlobalSecurity (Aug. 5, 2024), <https://www.globalsecurity.org/military/world/bangladesh/navy.htm>.

²⁸ *The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)* is an agreement among 20 Asian countries to enhance cooperation and information sharing to combat piracy and armed robbery against ships in the region.

²⁹ *The Penal Code* was adopted on 6 October 1860 which is known as *Penal Code of Bangladesh* after the country's independence.

individual who commits such an act can only be prosecuted in Bangladesh under the charge of sea robbery.

Nevertheless, it is unfortunate that Bangladesh has lacked historical legislation or policies to safeguard its marine sector and seafarers. As instances of piracy and armed robbery against ships continued to rise, there was an urgent requirement for domestic laws addressing piracy, which would serve as the legal framework for prosecuting individuals involved in piracy-related activities. Previously, Bangladesh did not possess any specific laws defining piracy, as it was not included as a criminal offense in the Penal Code of 1860. The Code's definition of piracy remains imprecise. Instead, it focuses on offenses such as murder, robbery, unlawful detention, physical harm, and others that share some similarities with piracy. This fragmented approach falls short of fully encapsulating the concept of piracy as outlined in UNCLOS Article 101 and its associated provisions. Bangladesh became a party to the Convention in 2001, thereby committing to the Convention's principles concerning the combating of piracy. Furthermore, on June 9, 2005, Bangladesh ratified the SUA Convention. This Convention mandates that state parties establish jurisdiction over offenses occurring within their territorial jurisdiction or territorial waters, extending to crimes committed beyond these regions. As a result, it is essential now to recognize Bangladesh as a responsible nation that upholds its international commitments as outlined in these conventions.³⁰

3. National Efforts Towards Combating Maritime Piracy

Bangladesh stands as an exemplary model in addressing maritime piracy within the Bay of Bengal. In today's global landscape, maritime piracy poses significant challenges to both maritime industries and seafarers. This criminal activity holds universal condemnation, irrespective of a nation's standing. Bangladesh has taken progressive measures to tackle this contemporary menace in a manner aligned with modern approaches. By instituting legislation that defines and addresses maritime piracy, Bangladesh has taken practical steps to combat piracy within the Bay of Bengal. These efforts are realized through the enforcement of laws aimed at safeguarding maritime interests.

Despite prior successes, particularly in the Bay of Bengal, it remains evident that the menace of piracy has not been eradicated. The objective of this concluding section is to extract insights

³⁰ Hasan SMM, *Bangladesh's response to piracy: A legal and policy perspective*, The Daily Star 284 (Aug. 25, 2012), <https://archive.thedailystar.net/law/2012/08/04/watch.htm>.

from the earlier discourse to address certain aspects of piracy. What emerges is that the intricate nature of contemporary piracy demands a comprehensive strategy that encompasses diverse pirate scenarios and criminal profiles. The worldwide community's experience, which represents the most dramatic example of modern piracy, has reaffirmed the necessity for a mix of varied means, from the pen to the sword³¹, and answers that are both flexible and durable. Bangladesh's response to combat maritime piracy can be categorized into five distinct mechanisms.

3.1 Enactment of Specific Domestic Laws

Despite Bangladesh's ratification of the UNCLOS in 2001 and the SUA Convention in 2005, the nation did not possess dedicated legislation exclusively defining maritime piracy or providing safeguards for its maritime industry and seafarers. Post its independence, the parliament enacted the Territorial Waters and Maritime Zones Act in 1974, marking the initial effort to ensure the protection of maritime interests. However, this 1974 Act faced limitations stemming from its lack of specificity and clarity. Additionally, the contested maritime boundaries involving India, Myanmar, and Bangladesh constrained its effective implementation. While intended to preserve the welfare of maritime industries and seafarers, the practical application of the Act within the Bay of Bengal proved intricate for Bangladesh. Nevertheless, Bangladesh subsequently secured favorable judgments in maritime territorial disputes, including a 2012 ruling against Myanmar and a 2014 ruling against India. These judgments played a pivotal role in addressing jurisdictional conflicts and considerably contributed to the resolution of the challenges faced by Bangladesh in its maritime domain.

Recently, Bangladesh has taken a significant stride in bolstering the safeguarding of its maritime industries and seafarers by amending the Territorial Waters and Maritime Zones Act of 1974, marking 47 years since its inception. In 2021, the parliament introduced a more specific iteration known as the Territorial Waters and Maritime Zones (Amendment) Act. Despite the nomenclature not explicitly reflecting exclusive laws on maritime piracy, this amendment effectively aligns with the principles outlined in the UNCLOS and SUA conventions. The amendments encompass crucial provisions, delineating procedures to address maritime piracy and providing a comprehensive definition of the term itself. While the essence of piracy remains congruent with the UNCLOS treaty, Section 2(3) of the 2021 Act uniquely

³¹ Kraska J & Wilson B, *Fighting Pirates: The Pen and the Sword*, 25(4) World Policy Journal 41-52 (2008).

cites UNCLOS as the authoritative reference for the convention within the ambit of this Act. A notable facet of this amendment is the establishment of a dedicated 'Maritime Tribunal' under Section 27 of the Act, mandated to handle a spectrum of maritime affairs. The new amendment meticulously articulates definitions for piracy and armed robbery across various sections, aimed at enhancing judicial clarity.

Section 9(a) of the Territorial Waters and Maritime Zones (Amendment) Act addresses the issue of Maritime terrorism, encompassing acts such as piracy, armed robbery, and theft at sea. Specifically, the Act defines maritime piracy as any unlawful act of violence or detention that occurs within the Exclusive Economic Zone (EEZ) and the High Seas, extending beyond 200 nautical miles, as clearly stated in Section 9 of the Act. It is important to note that, for this section of the Act, maritime terrorism applies to the entire maritime zone of Bangladesh. Furthermore, Section 2(12) of the Amendment Act outlines the maritime zones as defined within the context of the entire legislation, encompassing internal waters with territorial seas, the contiguous zone, the EEZ, and the continental shelf. Essentially, through this Amendment, Bangladesh aims to address and clarify territorial issues related to the high seas as per international treaties. The 2021 Act provides more precise wording to combat modern maritime piracy and armed robbery in the Bay of Bengal. This explicit provision underscores Bangladesh's resolute commitment to combating maritime piracy and armed robbery to safeguard its maritime interests. Notably, the addition of Section 9(a) aligns with the language of UNCLOS Article 101, which delineates the concept of maritime piracy. Meanwhile, Bangladesh has also proactively addressed domestic armed robbery on its waters through the inclusion of Section 9(b) within the Act.³²

3.2 Governance

One of the key catalysts behind maritime piracy is the state of governance within a country. Within the realm of maritime piracy, governance is tangibly linked to maritime security. A deficient or fragile government structure, as observed in the case of Somalia, contributes significantly to the sustained presence of piracy. This can be dissected from two angles. Firstly, regions where populations experience deprivation often become breeding grounds for criminal

³² Hosen MF, *Bangladesh: The Territorial Waters and Maritime Zones (Amendment) Act of 2021*, 8(1) Asia-Pacific Journal of Ocean Law and Policy 165-174 (2023).

activities.³³ Inadequate governance complicates the task of upholding law and order, leading both the individual nation and the global community toward a state of disorder.³⁴ In the absence of a genuine and effective administration, the potential persists for criminal activities and transnational offenses, piracy included, to persist within Somalia unless addressed through international intervention.³⁵

Implementing laws carries a higher cost compared to their formulation. Undeveloped and developing nations face challenges in fully enforcing all laws and regulations through law enforcement bodies. As per data from World Data Info, Bangladesh is classified as a developing country, with a human development index standing at 0.661.³⁶ Following its independence, Bangladesh was categorized as an underdeveloped nation by the World Bank. Over time, the governance of Bangladesh has been steadily strengthening. The progress in socioeconomic and political stability has empowered the country to enhance its governance framework. Consequently, the nation is now better positioned to prioritize and foster a well-organized governance system.

Designated as a 'Fragile States' region, the Gulf of Guinea is home to several nations grappling with structural shortcomings and significant socioeconomic challenges, as indicated by prevailing data. Nigeria's trajectory in this context has been noteworthy; its position has progressively deteriorated, moving from a relatively stable rank of 54 in the 2005 'Fragile State' assessments to 15 in 2023, propelling it into the top 20 fragile nations on the global 'Fragile State' index.³⁷ Concurrently, piracy incidents along the Nigerian coastline have experienced a notable escalation. Consequently, within the spectrum of counter-piracy strategies, global initiatives need to accord heightened precedence to bolster governance. Based on projections by the Fund for Peace, Somalia is anticipated to secure the top position among fragile states in 2023.

In 2008, Bangladesh was positioned as the 12th most fragile state according to the Fragile States Index data from the Fund for Peace. Over the subsequent 15 years, the nation made substantial strides in advancing its overall status. By 2023, Bangladesh had climbed to the 41st

³³ Samatar AI et al., *The Dialectics of Piracy in Somalia: The Rich Versus the Poor*, 31(8) Third World Quarterly 1377-1394 (2010).

³⁴ Kaplan RD, *The Coming Anarchy*, 2732 Atlantic Monthly 44-76 (1994).

³⁵ Petretto K, *Weak States Off-Shore: Piracy in Modern Times*, Hanns-Seidel-Stiftung, East African Human Security Forum: Nairobi (2008).

³⁶ *Developing Countries*, WorldData.info (Sept. 1, 2025), <https://www.worlddata.info/developing-countries.php>.

³⁷ *Country Dashboard*, Fragile States Index (Oct. 7, 2025), <https://fragilestatesindex.org/country-data/>.

spot on the Fragile States Index. Undoubtedly, Bangladesh still faces developmental challenges across various sectors, yet this progress can be seen as a notable achievement for a nation of its kind. Even amid the challenging backdrop of the COVID-19 pandemic, during which numerous countries suffered economic setbacks and encountered governance vulnerabilities, Bangladesh continued to demonstrate commendable performance in this arena. Despite a decline in its rank on the Fragile States Index during the pandemic period, Bangladesh retained its positions at 36, 39, and 39 in the years 2019, 2020, and 2021, respectively. This underscores the resilience of its governance, which has consequently contributed to the establishment of a robust socioeconomic and political framework.³⁸

3.3 Patrol and Enforcement

In every endeavor aimed at combating criminal activities, presence holds paramount importance. Before the implementation of multilateral naval operations in Asian maritime zones, pirates enjoyed unhindered access to open waters, effectively exerting control over the safety and security of commercial trade routes. The audacity displayed in hijacking ships within Asian waters, occasionally even close to state port territories, underscores the deficiency in maritime enforcement, surveillance, and responsive capabilities across the entire region.

While funding for the security sector often falls short, the scenario becomes more intricate concerning naval fleets and coastguards. China's allocation of resources towards safeguarding its maritime territory is emblematic of its extensive coastline. With an estimated coastline spanning 14,500 kilometers, China stands as the 10th largest globally and the fourth largest in Asia.³⁹ It possesses the world's second-largest GDP, sourced from offshore assets.⁴⁰ Nonetheless, the Chinese Navy comprises a troop contingent of 260,000 personnel, accompanied by a fleet of 59 submarines and over 142 patrol and coastal combat vessels. Notably, in comparison to the Army's equipment status, the Chinese Navy's resources are distinctly substantial.⁴¹ The Indian Navy enjoys ample funding and possesses the capability to effectively address maritime piracy. However, the potential resolution might lie within bilateral endeavors, where third-party nations leverage established political and security alliances to

³⁸ Country Dashboard, *supra* note 37.

³⁹ Hou X et al., *Characteristics of Coastline Changes in Mainland China Since the Early 1940s*, 59(9) Science China Earth Sciences 1791-1802 (2016).

⁴⁰ Kakwani N et al., *Growth and Common Prosperity in China*, 30(1) China & World Economy 28-57 (2022).

⁴¹ *Chapter Six: Asia*, 123(1) The Military Balance 208–301 (2023).

facilitate collaborative counter-piracy efforts.

In the global GDP ranking, Bangladesh occupies the 37th position, and within South Asia, it secures the 2nd spot.⁴² Stretching across approximately 710 kilometers, the coastline constitutes a dynamic convergence of diverse biological and economic ecosystems, encompassing elements such as mangroves, tidal flats, and an array of 70 islands.⁴³ In 2013, Bangladesh augmented its defense budget by approximately 129 billion USD. During that time, the country possessed a fleet comprising 5 frigates alongside 47 additional patrol and combat vessels.⁴⁴ A decade later, Bangladesh has made substantial strides in enhancing its naval capabilities. As of 2023, Bangladesh has bolstered its naval fleet by incorporating 2 submarines, complementing its existing arsenal of 6 frigates and 51 patrol and combat vessels.⁴⁵ The Bangladesh Navy is supplemented by a complement of aircraft and helicopters. In its commitment to combating maritime piracy, Bangladesh employs not only the Navy but also enlists the participation of the Rapid Action Battalions, Border Guard Bangladesh, and the Coast Guard within its security fleet. This combined force encompasses over 23 patrol and combat vessels, alongside a significant personnel presence, actively ensuring security in the Bay of Bengal.⁴⁶ While the force may seem substantial for addressing maritime piracy along a mere 710-kilometer coastline, it proves adequate for tackling this issue through vigilant patrolling. This approach effectively upholds the enforcement of laws and regulations against maritime pirates within the designated area.

3.4 Effective Legal Regime

Piracy tends to increase within environments marked by fragile legal frameworks, as demonstrated by the case of Somalia. Notably, a transformative shift was observed when naval intervention in Somalia was coupled with effective measures for investigating and prosecuting pirates. To effectively address piracy in the Gulf of Guinea, it is imperative to address the current legislative gaps. This observation is corroborated by a review of the national legislation database of the UN Division for Ocean Affairs and the Law of the Sea (UNDOALOS), which highlights that Liberia and Togo are the sole states within the region to have enacted anti-piracy

⁴² *GDP - Asia*, Trading Economics (Oct. 7, 2025), <https://tradingeconomics.com/country-list/gdp?continent=asia>.

⁴³ Ahmad H, *Bangladesh Coastal Zone Management Status and Future Trends*, 22(1) *Journal of Coastal Zone Management* 1-7 (2019).

⁴⁴ *Chapter Six: Asia*, 113(1) *The Military Balance* 245–352 (2013)

⁴⁵ Petretto, *supra* note 35.

⁴⁶ Petretto, *supra* note 35.

legislation.⁴⁷ Nigeria is reported to have initiated the legislative process aimed at combating piracy and other maritime crimes in January 2013.⁴⁸

Bangladesh has actively implemented regulations to counter maritime piracy. The country achieved remarkable advancements in the marine sector following its triumph in the maritime border dispute between India and Myanmar. In 2021, Bangladesh's parliament introduced the Territorial Water and Maritime Zones (Amendment) Act, aimed at addressing maritime concerns. This legislation introduces provisions that encompass piracy and armed robbery as punishable offenses within the national penal code. Previously, the legal framework often led to a scenario of catch and release in piracy cases within the Bay of Bengal or even the prosecution of pirates under charges unrelated to piracy. Bangladesh has also expanded its activities in the Bay of Bengal by establishing additional Exclusive Economic Zones (EEZs) through new regulations and laws. These efforts underline the pursuit of more stringent laws and regulations to fortify maritime security.

3.5 Regional Cooperation and Multilateral Engagement

In its pursuit to counter maritime piracy in the Bay of Bengal, Bangladesh has undertaken a comprehensive approach that encompasses not only the involvement of law enforcement entities but also initiatives involving regional collaboration and multilateral operations alongside neighboring nations. The maritime piracy challenges within the Bay of Bengal are predominantly faced by Bangladesh, India, and Sri Lanka. Historically, the Bay of Bengal served as a favorable passage and refuge for maritime pirates. However, through concerted regional efforts alongside India, Sri Lanka, and the Maldives, Bangladesh has effectively eradicated various forms of maritime piracy threats from this maritime zone. A pivotal mechanism for regional cooperation in this endeavor is the South Asian Association for Regional Cooperation (SAARC), encompassing a significant number of countries bordering the Bay of Bengal. Notably, Myanmar's absence from SAARC due to differing political ideologies is acknowledged. The fourth SAARC security conference in 2011 prominently addressed maritime security, underscoring the collaborative regional approach required to

⁴⁷ *State practice on the Internet in Maritime Space: Maritime Zones and Maritime Delimitation*, United Nations - Office of Legal Affairs (Oct. 7, 2025), <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/index.htm>.

⁴⁸ Editorial Team, *NIMASA Seeks Legal Backing to Fight Piracy*, SAFETY4SEA (May 25, 2012), <https://safety4sea.com/nimasa-seeks-legal-backing-to-fight-piracy/>.

combat maritime threats effectively.⁴⁹ In 2020, Bangladesh engaged in a collaborative naval exercise training known as Cooperation Afloat Readiness and Training (CARAT), involving the United States Navy, the United Nations Office on Drugs and Crime (UNODC), and the Bali Process Regional Support Office (BP-RSO). This joint effort was aimed at fortifying security measures and enhancing Maritime Domain Awareness (MDA) within the Bay of Bengal region.⁵⁰ In May 2023, the city of Dhaka played host to the 6th Indian Ocean Conference 2023, bringing together representatives from 25 nations in the Indian Ocean region. The focus of this conference was on deliberating regional cooperation and security matters, particularly in the context of the growing significance of the Indo-Pacific. A collective consensus emerged to enhance multilateral naval operations as a strategic response to address maritime threats within the Indian Ocean, encompassing areas such as the Bay of Bengal.⁵¹ As a participant in the Belt and Road Initiative (BRI) alongside the Republic of China, Bangladesh is actively engaged in deepening its collaboration. Soon, Bangladesh is set to commence naval exercises in conjunction with China, aimed at reinforcing capabilities in the realm of maritime security within the Bay of Bengal. It is worth noting that the route of the Belt and Road Initiative traverses across the Bay of Bengal, where piracy poses a tangible risk to maritime sectors.⁵²

4. Challenges

Similar to India, Bangladesh has recently introduced legislation in 2021 that explicitly designates maritime piracy and armed robbery as criminal acts within its maritime domain. In this regard, the newly enacted Amendment draws upon the framework outlined in Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS) to define the meaning and scope of maritime piracy with clear wording. Since 2012, Bangladesh has made substantial strides in bolstering its maritime security capabilities to address prevailing threats, which have encompassed the establishment of a well-structured legal framework and the engagement of

⁴⁹ Rahman MR, *Regional Cooperation in Maritime Security: A View From the Bay of Bengal*, Annual International Studies Convention (2013).

⁵⁰ Petty Officer 2nd Class Tristin Barth, *U.S. and Bangladesh Navies Kick Off Cooperation Afloat Readiness and Training 201*, U.S. Indo-Pacific Command (Nov. 4, 2019), <https://www.pacom.mil/Media/News/News-Article-View/Article/2007979/us-and-bangladesh-navies-kick-off-cooperation-afloat-readiness-and-training-201/>.

⁵¹ Alam J, *Representatives from 25 Indian Ocean nations discuss security, economic growth and cooperation*, AP News (May 12, 2023), <https://apnews.com/article/indian-ocean-bangladesh-security-80791c37b36593bd7e165f042b84a7b9>.

⁵² Sarker NM, *Bangladesh–China Maritime Security Cooperation: A Search for New Opportunities Under the Belt and Road Initiative*, China and South Asia. Routledge India 157-172 (2021).

law enforcement through vigilant patrolling efforts. However, it is noteworthy that the Penal Code of Bangladesh, formulated in 1860, lacks specific provisions for addressing maritime piracy as a distinct offense. While the Code covers penalties for crimes such as murder, robbery, kidnapping, and physical injury, some parallels with piracy exist. In this context, there's a pertinent need for the Bangladeshi Parliament to reevaluate the inclusion of precise punishments tailored for maritime piracy within the domestic penal code.

Concerning territorial jurisdiction, Bangladesh holds authority over its marine territory and territorial sea under the SUA Convention. Nonetheless, constraints arise concerning incidents occurring beyond these demarcated boundaries. Bangladesh should consider revisiting its laws and regulations, which currently pertain only to its territory and territorial sea, to address jurisdictional limitations effectively.⁵³ To overcome this territorial constraint, Bangladesh can embrace the concept of universal jurisdiction in its approach to addressing maritime piracy, a crime recognized as having global implications. Drawing inspiration from legal precedents, Bangladesh could consider adopting a case law model akin to that of the Korean Apex Court. Notably, the 2012 case of *Korea v. Arave* saw the Republic of Korea's Apex Court asserting universal jurisdiction over Somali pirates involved in the abduction of Korean naval vessels within the Indian Ocean.⁵⁴

In the realm of maritime bilateral treaties, Bangladesh has entered into an Agreement on Coastal Shipping with India. Within this agreement, Article XIV places a significant emphasis on addressing maritime crime. Such bilateral maritime agreements have proven instrumental in enabling both countries to focus on enhancing maritime security, a critical component in the fight against piracy. As a nation situated in the Bay of Bengal region, Bangladesh consistently places great importance on maritime security discussions with neighboring countries. Regrettably, due to political challenges, Bangladesh currently lacks bilateral treaties with Myanmar and Sri Lanka. Given the strategic importance of the Bay of Bengal, Bangladesh must establish a bilateral maritime treaty with Myanmar to establish a robust security framework aimed at countering maritime piracy in the Bay of Bengal.

⁵³ Hasan SMM, *Bangladesh's response to piracy: A legal and policy perspective*, 284 The Daily Star (Aug. 25, 2012), <https://www.thedailystar.net/law/2012/08/04/watch.htm>.

⁵⁴ Lee S & Park YK, *Republic of Korea v. Arave*, 106(3) American Journal of International Law 630-636 (2012).

5. Limitation

When considering its entire maritime boundary, Bangladesh boasts a relatively modest expanse of coastline. Compared to other maritime nations grappling with more pronounced maritime challenges, Bangladesh's patrolling coverage for addressing maritime crises spans a relatively smaller area. Establishing a comprehensive security infrastructure along its Bay of Bengal coastline has been a gradual process for Bangladesh, accomplished within the constraints of limited resources. As a developing nation, Bangladesh annually allocates a substantial portion of its budget towards enhancing sea territory security, a commitment that can exceed its capacity. In practice, emulating Bangladesh's approach as a role model to tackle maritime threats might prove to be challenging for several nations. For emerging and underdeveloped countries with extensive coastlines, augmenting security expenditure to counter marine threats poses a formidable endeavor.

6. Conclusion

Despite facing various challenges and limitations, Bangladesh stands as a compelling exemplar in the realm of countering maritime piracy and armed robbery. The concerted efforts of law enforcement agencies, including the Navy and RAB, have significantly bolstered security in the Bay of Bengal against maritime threats. The introduction of recent legislative measures, exemplified by the Territorial Water and Maritime Zones (Amendment) Act of 2021, has significantly strengthened the protection of maritime domains encompassing internal waters, Exclusive Economic Zones (EEZs), and the high seas. Encouragingly, this endeavor has yielded tangible outcomes, with a consistent decline in maritime piracy and armed robbery incidents within the Bay of Bengal. Bangladesh's accomplishments in this sphere are markedly attributed to regional cooperation and multilateral collaboration with nations like China, India, Sri Lanka, the United States, and other Indian Ocean nations. This collective approach has generated a substantial reduction in maritime piracy cases within the Bay of Bengal, underscoring a noteworthy international success story. This achievement can serve as a blueprint for other maritime nations aiming to counter maritime piracy and armed robbery through similar techniques on the high seas.

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